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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. ———

UNITED STATES OF AMERICA, APPELLANT

v.

GRINNELL CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court, including its findings of fact and conclusions of law (App. A) is reported at 236 F. Supp. 244.

JURISDICTION

The judgment of the district court (App. B) was entered on November 27, 1964. The notice of appeal was filed by the United States on January 25, 1965. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *Loew's Inc.*, 371 U.S. 38; *United States* v. *Columbia Steel Co.*, 334 U.S. 495.

QUESTIONS PRESENTED

The district court found that the four defendants had unlawfully monopolized an industry by a wide range of anticompetitive practices, acquisitions, and alliances extending over fifty years and violating in numerous respects both Section 1 and Section 2 of the Sherman Act. As a result of these practices the defendants together controlled 87 percent of the business, and defendant American District Telegraph Co. alone controlled 73 percent. The questions presented are whether the district court failed to grant adequate relief when it refused: (1) to require any divestiture by American District Telegraph Company; (2) to eliminate the common control of the alarm-company defendants by requiring sale, rather than distribution, of the stock held by their parent company; (3) to enjoin their long-term preemptive arrangements with customers; (4) to require the defendants to sell equipment they manufacture to competing companies to render the customer services they furnish; and (5) to grant the visitation rights which have become a standard aspect of relief in similar cases.[1]

STATUTES INVOLVED

Sections 1, 2 and 4 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, 2, 4, provide in pertinent part:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in

[1] While these are the most important elements of relief that the district court declined to grant, the government reserves the right to urge other provisions for relief omitted by the district court if jurisdiction is noted by this Court.

restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor * * *.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.

* * * * *

SEC. 4. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1–7 of this title; * * *.

STATEMENT

The government's complaint, filed under Section 4 of the Sherman Act, charged that Grinnell Corporation, American District Telegraph Co., Automatic Fire Alarm Company of Delaware, and Holmes Electric Protective Co. (hereinafter referred to as Grinnell, ADT, AFA, and Holmes, respectively) had violated Sections 1 and 2 of the Sherman Act by practices aimed at monopolizing the central station protective service business (hereafter referred to as CSPS). After trial, the court found that the defendants had obtained a predominant position in the CSPS business (87 percent of the market) by engaging in a wide variety of anticompetitive activities in violation of Sections 1 and 2 of the Act. It concluded that through these activities the defendants had monopolized the CSPS business.

The court entered a final decree without holding a post-trial hearing on relief, and without discussing detailed proposals which had been made by the parties before the trial. The decree omits a number of provisions which the United States believes indispensable to remedy the violations shown. Indeed the defendants had conceded prior to trial that, if the government prevailed on the merits, a substantial amount of relief in these areas would be appropriate. The issue on which the government seeks review in this case is the adequacy of the district court's decree.

1. THE CENTRAL STATION PROTECTIVE SERVICE BUSINESS

The central station protective service business provides a unique and effective means of promptly detecting and dealing with burglaries, fires, and other hazards. This business, which the court below held is a distinct line of commerce, consists of the installation and maintenance of burglar, fire, and other hazard alarms connected to a central station by leased telephone lines, and the receipt and handling of alarms transmitted to the central station from the premises of subscribers. For technical and practical reasons, the service from a single central station is generally limited to customers within a restricted area, usually a 25-mile radius of the station.

Insurance underwriters have established testing laboratories, adopted standards, and organized periodic inspections of protective signalling systems. They offer reduced burglary and fire insurance premiums to customers who use approved protective signalling systems. Discounts accorded to accredited

CSPS subscribers tend to be noticeably larger than for users of other systems (App. A, pp. 25–27, Fdgs. 2, 5).[2]

A subscriber to CSPS service must pay an installation charge which includes most, if not all, of the cost of the needed equipment and labor plus overhead expenses and, often, a substantial profit. Thereafter he pays an annual service charge for the life of the contract, frequently five years. Normally, at the termination of this period the service company has a right to remove the equipment from the subscriber's premises without refund of any part of the installation charge (App. A, pp. 6–7, Fdg. 6).

2. THE DEFENDANT COMPANIES

Grinnel is engaged in the manufacture and installation of automatic sprinkler systems (App. A, p. 29, Fdg. 17). It owns 79 percent of the stock of the defendant ADT, 89 percent of the stock of AFA, and 100 percent of the stock of Holmes (App. A, pp. 29–30, Fdg. 18, GX–316, p. 5).

ADT is engaged in the manufacture of protection devices and provides central station protection service throughout the United States and Canada. In 1961, ADT had 121 central stations located in 115 cities in the United States and accounted for 73 percent of the national market. In 92 of these 115 cities, ADT had no CSPS competition (App. A, p. 27, Fdg. 7; GX–312, p. 1).

AFA similarly manufactures protective devices and provides central station protection service. In 1961 AFA had three central stations located in three dif-

[2] "Fdgs." refers to the district court's Findings of Fact.

ferent cities and accounted for 2 percent of the national market (App. A, p. 27, Fdg. 9; GX–312, p. 1).

Holmes is also engaged in the CSPS business. In 1961, Holmes accounted for 12 percent of the national market and had 14 central stations in three cities—11 in New York City, 2 in Philadelphia, and 1 in Pittsburgh (App. A, p. 27, Fdg. 8, GX–312, p. 1).

The combined market share of the national CSPS business held by the defendant alarm companies amounted to 87 percent in 1961 (App. A, p. 30, Fdg. 20).

3. THE DISTRICT COURT'S FINDINGS

The district court found that automatic protective systems differ from non-automatic systems both in technology and in over-all effectiveness (App. A, p. 33, Fdg. 29). Similarly, it found marked differences between accredited CSPS and all other automatic systems—differences which are reflected in the fact that insurance companies allow significantly larger reductions of premiums for accredited central station service than for any other types of protective service (App. A, p. 34, Fdgs. 33, 35). On this basis, it concluded that "for purposes of the antitrust laws there exists a * * * separate * * * market limited to accredited central station protective systems operated by largely automatic devices" (App. A, p. 34, Fdg. 36). The relevant geographic market is the nation as a whole (App. A, pp. 34–35, Fdgs. 37, 40).

The district court held that the defendants' 87-percent share of the national accredited CSPS market

raised a presumption that they had monopolized this market in violation of Section 2 (App. A, pp. 36, 38, Fdgs. 44, 48). It found not only that the defendants had failed to show that this monopoly was thrust upon them, but also that the evidence affirmatively established that the defendants had actively pursued anti-competitive means to achieve monopoly power. They had acquired at least 25 competing companies, often exacting long-term covenants not to compete from the former managements of such companies, and sometimes acquiring companies for the sole purpose of immediately dismantling a competitor (App. A, pp. 38–39, Fdgs. 48–51).

Beginning as early as 1904, the defendants had entered into agreements with each other for the division of territories and the allocation of classes of CSPS (App. A, pp. 39–41, Fdgs. 51a–53). Although these agreements are no longer formally in effect, the court found that "their influence in business patterns remains to a discernible extent" (App. A, p. 39, Fdg. 51).

The defendants also entered into agreements with other alarm companies which furthered their control of the CSPS market. Thus, for example, Grinnell and ADT entered into an agreement with Rhode Island Electric Protective Company ("RIEP") giving RIEP the exclusive right to render CSPS within Rhode Island at prices not less than those established by ADT. RIEP agreed to use certain devices supplied by Grinnell and to share its revenue with ADT and Grinnell (Fdg. 54).

To maintain their monopoly position the defendants engaged in a variety of other predatory practices:

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they cut prices drastically on a temporary basis in limited areas, installed CSPS equipment without charge, reduced rates on an entire chain business account to preclude a competitor from securing an account in one location, and allowed deferred payment of installation charges—all on a selective, anti-competitive basis (App. A, p. 42, Fdg. 55).

The district court concluded that the defendants had engaged in *per se* violations of Section 1 when they entered into agreements dividing geographic markets, allocating customers, and fixing minimum prices (App. A, pp. 42–43), and that the alarm-company defendants had further engaged in restraints of trade prohibited by Section 1 when, as dominant companies, they manipulated their prices to forestall competition (App. A, p. 43). These restraints of trade and the acquisitions of competitors were the means by which the alarm-company defendants "previously attempted to monopolize and now do conspire to monopolize, and do monopolize, the national market in the accredited CSPS industry, all in violation of Section 2 of the Sherman Act." (App. A, p. 43.) The court further concluded that Grinnell's acquisition of the defendant alarm companies, and its direction of the policies of the four companies toward the maintenance of the monopoly position, constituted a violation of Section 2 (App. A, p. 44).

4. RELIEF

Before trial, the district court entered an order requiring both parties to file briefs and draft decrees "stating their views with respect to the relief which would be appropriate in the event [the United States]

prevails." Pretrial order of December 18, 1963. Although the defendants worded the introduction to their proposed decree as if it were a consent judgment, their accompanying briefs make clear their understanding that they were expressing their "views on the relief which would be appropriate if plaintiff were to prevail on the question of liability." Grinnell Corporation's Brief on Relief, p. 1.[3]

In its brief and accompanying decree, the government proposed, *inter alia,* the following: that ADT be required to establish, in each of the 48 different cities, new central station corporations which would be fully equipped and capable of servicing a specified dollar volume of business, and that ADT then divest itself of the stock of those corporations; or, in the alternative, sell and transfer specified amounts of service contracts. At the end of 10 years, unless the defendants could satisfy the court that effective competition had been restored or established in each of 59 cities, the court was to enter such orders as it deemed

[3] The briefs and proposed decrees were not considered by the court or the parties as proposed consent decrees, although it was recognized that the district court's views as to appropriate relief on the assumption the government proved its allegations could be an important factor in any future discussions of a consent decree. The primary purpose of the order, issued at defendants' request, was the suggestion by the Judicial Conference in its *Handbook of Recommended Procedures for the Trial of Protracted Cases* that (pp. 46–47) "[f]rank discussion * * * of the government's objectives in civil antitrust cases may aid the trial judge in appraising the relevance and—more important—the significance of the proofs when they are offered." Thus the briefs and decrees submitted by both parties were not offers made in a bargaining context; they were arguments as to the nature of the relief the court should enter if the case went to trial and the government prevailed.

necessary to require divestiture in these cities (App. C, pp. 61–63).[4] Grinnell was to divest its interest in the alarm companies to persons not affiliated with any of the defendants (App. C, p. 64). The defendants were to be enjoined from entering into any service contract in excess of one year's duration (App. C, p. 58). The defendants were to transfer to subscribers, the title to equipment installed on their premises (App. C, p. 60). The defendants were to be required to sell upon nondiscriminatory terms any device manufactured by the defendants for use in furnishing central station protective service (App. C, p. 61). Finally, the government proposed that to aid enforcement it should have "visitation" rights, i.e., the right to require reports, to examine pertinent documents, and to interview company personnel. (App. C, p. 65).

In their pre-trial submission to the court the defendants agreed that, if the United States prevailed, an appropriate decree would include the substance of all of the government's proposals, although they differed in matters of detail and degree. Thus, the defendants' proposed decree provided that part of ADT's business would be divested (App. C, pp. 61–64); that no subscriber be required to contract for service in excess of one year and that contracts for longer periods contain an option giving the subscriber the right to terminate the contract at the end of any contract year (App. C, p. 58); and that the defendants must offer each subscriber upon entering into

[4] For the convenience of the Court, the defendants' proposed changes in the government's proposed form of judgment, which includes the latter, is printed in Appendix C.

any new or renewal service contract the right to purchase all equipment installed in the customer's premises (App. C, p. 60). The defendants' proposed decree accepted in *haec verba* the government proposals (a) requiring the defendants to sell upon nondiscriminatory terms any device manufactured by them for use in their service, and (b) granting the government visitation rights (App. C, pp. 61, 65).

The district court withheld both the full relief requested in the government's proposals and even the more limited relief along the same lines which the defendants acknowledged to be appropriate. Without explaining why lesser relief was sufficient, the court entered a final decree enjoining all of the defendants from "restraining trade, or attempting or combining to restrain trade, in [the national market of insurance-accredited central station protective service] and from further attempting to monopolize, or conspiring to monopolize, or monopolizing that designated market" (App. B, p. 52). To implement this prohibition, the court ordered the alarm companies to file with the Department of Justice standard lists of prices and terms, and every quotation deviating from such lists (App. B, p. 52). Grinnell was ordered to file, not later than April 1, 1966, a plan of divestiture of its stock in each of the alarm company defendants; it is given the option either to sell the stock or to distribute it to its shareholders, or to combine or vary these methods (App. B, p. 52). The court further enjoined any of the defendants from employing in any capacity, the president and chairman of the board of Grinnell, James D. Fleming (App. B, pp. 52–53).

THE QUESTIONS ARE SUBSTANTIAL

This appeal raises substantial questions concerning the relief necessary to restore competition to an industry which has been illegally monopolized. This Court has often pointed out that the relief decreed is the most significant phase of an antitrust case (*United States* v. *U.S. Gypsum Co.*, 340 U.S. 76; *United States* v. *duPont & Co.*, 366 U.S. 316, 323). While the district court has "the responsibility *initially* to fashion the remedy" in antitrust cases (*United States* v. *duPont & Co., supra,* emphasis in original), the decree formulated by the district court is not "subject only to reversal for gross abuse" (*United States* v. *U.S. Gypsum, supra,* p. 89), but is subject to "most careful scrutiny of this Court." *International Boxing Club* v. *United States,* 358 U.S. 242, 253; *United States* v. *Loew's, Inc.,* 371 U.S. 38.

This is a case calling for review by the Court because it seems quite apparent that the government has "won the battle and lost the war" (*International Boxing Club* v. *United States, supra,* at 259). Adequate relief in a monopolization case such as this should (1) put an end to the combination; (2) deprive the defendants of the benefits of their illegal conduct; and (3) break up or render impotent the monopoly power which violated the Act. *Schine Chain Theatres* v. *United States,* 334 U.S. 110, 128–129; *International Boxing Club* v. *United States, supra.* These objectives cannot be realized under the district court's decree.

While we recognize that the defendants' pretrial proposals as to the relief appropriate if the govern-

ment prevailed are not binding upon them or upon the district judge, they emphasize the inadequacy of the relief decreed in this case, for the defendants conceded the propriety of much of the relief sought by the government. We discuss below the main features of the relief necessary to restore competition in the CSPS business, pointing out how the parties were in agreement in principle as to the appropriateness of each item. In each instance, there is no comparable provision in the decree of the court below, and the court has offered no explanation for the omission.

1. ADT is the single largest factor in the nation's market for accredited CSPS. With 73 percent of the national market, it is a monopoly in and of itself. *United States* v. *Aluminum Co. of America,* 148 F. 2d 416 (C.A. 2). In 92 cities, ADT had no CSPS competition at all. In the course of acquiring this predominant position, it violated the Sherman Act in every imaginable fashion. By its own count, ADT has acquired 22 CSPS companies, some for the sole purpose of dismantling competitors (App. A, p. 38, Fdg. 50). It entered into agreements with competitors for the division of markets and foreclosed other competition by selective manipulation of its rates and services. While the district court did not find it necessary, under its theory, to make findings with respect to all of ADT's conduct, the record shows that ADT engaged in many other predatory practices, including agreements with competitors not to solicit from each other's subscribers (GX 320, pp. 11–43; GX 360, pp. 5–14) and threatening to drive other

competitors out of business if they attempted to take business away from it. (GX 139; GX 333, pp. 48–53, GX 351, pp. 52–64).

In these circumstances a mere injunction in the general language of the statute is not enough "effectively [to] pry open to competition a market that has been closed by defendants' illegal restraints." *International Salt Co.* v. *United States,* 332 U.S. 392, 401. Indeed, even the defendants agreed that some form of divestiture by ADT of part of its business was appropriate. They stated: "Assuming liability can be established, the difference between the parties is not *whether* there is to be divestiture but the *extent* of divestiture necessary to achieve healthy competitive conditions." Grinnell Corporation's Brief on Relief, p. 18 (emphasis in original); Alarm Companies' Brief on Relief, pp. 18–21; App. C, pp. 61–64. The court's decree does nothing to accomplish such divestiture.

2. The separation of ownership of the four defendants which the court's decree contemplates is no substitute for divestiture of portions of ADT's business. Moreover, while there was no hearing on the subject, the court's decree will probably be inadequate even to separate control of the four companies. Published reports indicate that Grinnell's management and their families own 30 percent of the stock of Grinnell (Standard and Poor's Corporate Records, April–May 1964, p. 3489). The court's decree, by giving Grinnell the option to distribute the stock of the other companies to its shareholders, could serve to perpetuate the existing centralized control.

3. At the present time, the defendant alarm companies require their subscribers to accept long-term contracts. They also refuse to sell equipment installed on subscriber's premises even though they charge an installation fee which includes most, if not all, the costs of materials, labor, overhead, and a profit (App. A, pp. 26–27, Fdg. 6). By means of these two devices, customers are effectively tied to the defendants. The cost of installation is so great that it is wholly impractical for any subscriber to shift his patronage to a competitor of the defendants. For, if he does so shift, the defendants will remove the equipment for which he has paid and the subscriber will be put once again to the substantial expense of installing new equipment. (GX 186; GX 313, pp. 12–13; GX 357, pp. 53–54; GX 320, p. 16.) The long-term contracts covering periods of up to five years also serve to tie customers to the defendants and to preclude a competitor from breaking into this market.

The government proposed that the defendants be required to assign to subscribers title to equipment installed on their premises and that the defendants be enjoined from entering into service contracts in excess of one year. The defendants conceded that some relief along these lines was appropriate, proposing that their customers have the options of purchasing equipment and of cancelling service contracts at the end of each year (App. C, pp. 58–60).

As noted, the district court made no effort to reform the defendants' restrictive contracting practices, although these were important parts of the pattern of monopolization.

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4. The government proposed that the defendants should be required to sell upon nondiscriminatory terms any devices manufactured by them for use in furnishing CSPS service. ADT manufactures many of the protective devices used in the defendants' protection systems (GX 309, p. 3; GX 313, pp. 5–7). If competitors are to compete for defendants' existing customers as service contracts expire, they must be assured of replacement parts to maintain these existing systems. Moreover, the prospect of competition for new customers in the CSPS business should not be limited by an inability of competitors to obtain needed equipment and parts. Finally, if ADT is required to divest part of its business, the competitors thus created must be assured of a supply of parts to maintain the systems they acquire. The defendants agreed without qualification to the appropriateness of this form of relief (App. C, p. 61).

5. The government and the defendants also agreed that the government should be given visitation rights as an adjunct to enforcement of the decree (App. C, p. 65). Rights to require reports, examine documents, and interview company personnel, similar to those sought by the government in this case, have been approved by the Court in *United States* v. *U.S. Gypsum Co.*, 340 U.S. 76; *Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 433; *United States* v. *Bausch & Lomb Co.*, 321 U.S. 707, 724–728, and are found in some form in virtually every consent judgment entered in Sherman Act cases (see, *e.g.*, *United States* v. *Driver Harris Co.*, 1964 Trade Cases ¶71,169 (D. N.J.); *United States* v. *Stamps-Canhaim-White-*

head, Inc., 1963 Trade Cases ¶70,857 (N.D. Iowa); *United States* v. *McGraw Edison Co.*, 1962 Trade Cases ¶70,500 (E.D. Pa.); *United States* v. *Sangamo Electric Co.*, 1962 Trade Cases ¶70,502 (E.D. Pa.)). Thus, both this Court and litigants generally have recognized that a provision of the kind proposed by the government facilitates enforcement of an antitrust judgment.

CONCLUSION

The decree entered by the court below is plainly inadequate to remedy the pervasive effects of the defendants' illegal monopolization of the alarm business. The issue of relief in this case presents a substantial question of public importance. Probable jurisdiction should therefore be noted.

Respectfully submitted.

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APRIL 1965.

APPENDIX A

United States District Court, District of Rhode Island

Civil Action No. 2785

UNITED STATES OF AMERICA

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE

SYLLABUS

This action brought against Grinnell and 3 affiliated companies, in each of which Grinnell has preponderant stock ownership, charges them with violation of §§ 1 and 2 of the Sherman Act. Affiliates are all engaged in the Central Station Protective Service business, which supplies services from central points to customers at whose establishments are automatic alarm systems signalling fires and burglaries. That part of the CSPS business which is accredited by insurance companies constitutes an identifiable market, distinct from non-automatic protective services, from automatic systems unconnected with central stations, and from systems not certified by insurance companies; and this market has a national interstate-commerce character. The affiliates have an over 87% share of that market; and the affiliates' policies are controlled by Grinnell. Defendants have not borne the burden of proving that they acquired this dominance through skill, efficiency, and foresight. The

preponderance of evidence compels the finding that the present dominance of the affiliates in the industry was caused by their restraints of trade, in violation of § 1 of the Act. Those restraints included the execution of now-lapsed agreements which in their origin set patterns for allocations of territory and of types of business. Those patterns, though no longer legally enforced, have become, to a large extent, habitual in the industry. Moreover, the affiliates gained their dominance, to a significant degree, by acquisitions of the business or equipment of competitors. Grinnell, itself, in purchasing the controlling shares of these affiliates and in effectively, through its president, uniting their policies joined the alarm company affiliates in what, as a matter of law, constituted a conspiracy to monopolize the market, as above defined, in the accredited CSPS industry in violation of § 2 of the Act. Moreover, success having crowned the attempt, all defendants monopolized the same market in violation of the same § 2. As a remedy against these violations the Government is entitled to a decree *first,* enjoining defendants from further acquisitions or restraints of trade, including a provision requiring each affiliate to notify the Government whenever it quotes to any prospective customer prices or terms lower than that affiliate's own schedule; *second,* divesting Grinnell of all stock ownership in the 3 affiliated companies; and *third,* enjoining each defendant from hereafter employing the president of Grinnell who for over 15 years has been the effective leader of the course of unlawful conduct, and, therefore, cannot be trusted to head the reform imposed by this decree.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND OPINIONS

November 27, 1964

WYZANSKI, D.J.

There follow in order an introduction, findings of fact, conclusions of law, opinion on liability, and opinion on remedy.

A. INTRODUCTION

This is a civil suit wherein the Government complains that Sections 1 and 2 of the Sherman Act [Act of July 2, 1890, c. 647, 26 Stat. 209, 50 Stat. 693, 15 U.S.C. §§ 1, 2] have been violated by Grinnell Corporation, a Delaware corporation with its principal place of business in Providence, Rhode Island, (hereafter called "Grinnell"), and three corporations, a majority of the capital stock of each of which is owned by Grinnell, to wit, American District Telegraph Company, a New Jersey corporation, (hereafter called "ADT"), of whose capital stock Grinnell owns 76%, Holmes Electric Protective Company, a New York corporation, (hereafter called "Holmes"), of whose capital stock Grinnell owns 100%, and Automatic Fire Alarm Company of Delaware, a Delaware corporation, (hereafter called "AFA"), of whose capital stock Grinnell owns 89%. All these 3 corporations have their principal place of business in New York. Collectively, the 3 corporations are referred to sometimes as the "affiliates," and sometimes as the "alarm companies."

Complaint, seeking relief under § 4 of the Sherman Act [26 Stat. 209, 15 U.S.C. § 4], was filed April 13, 1961. Extensive pre-trial discovery and frequent pre-trial conferences with the Court, and above all, the co-operation of informed, industrious, and experienced lawyers, who jointly took 128 depositions (totalling over 8,000 pages), to a large extent disclosed to each

other proposed exhibits, entered into 5 stipulations (totalling 58 pages), and exchanged careful, thorough, pre-trial briefs (in excess of 400 pages), enabled the parties at the outset of the trial to lay before the Court 1181 exhibits comprising approximately 15,000 pages. The preliminary procedural and substantive steps reduced the taking of testimony in open Court to six days, from June 15, 1964 to June 24, 1964. The Court, at the conclusion of the testimony, required each party to use the summer recess to limit to 40 pages the principal portion of its brief, with a right to annex appendices of unlimited length. Oral arguments upon those briefs and replies thereto took place on October 9, 1964.

Before findings, conclusions, and opinions are set forth, this Court takes this opportunity to make explicit certain aspects of its approach to this controversy.

This Court is mindful that in recent years antitrust litigation, particularly Government civil actions alleging violations of § 2 of the Sherman Act, have involved an enormous, nearly cancerous, growth of exhibits, depositions, and *ore tenus* testimony. Few judges who have sat in such cases have attempted to digest the plethora of evidence, or indeed could do so and at the same time do justice to other litigation in their courts. Nor is there any sound reason to believe that such extensive presentation accomplishes any important legal or other social end.

Historically, the major explanation of prodigious records probably is the lack of certainty both at the bar and on the bench as to what was the scope of § 2, and, even to some degree, of § 1 of the Act. Fluctuations in Supreme Court interpretation of the statute prevented lawyers no less than laymen from having confidence as to how an antitrust controversy would

be viewed in the Supreme Court, and those who were in authority were unwilling prematurely to draw sharp boundaries of relevance and materiality.

Time, however, has hardened the lines of interpretation of the Act. No doubt, courts have been aware that the text of the Sherman Act, *simpliciter*, though it withstood early attacks grounded on the charge that it was so vague as not to meet the due process standard of the Fifth Amendment to the United States Constitution, *Nash* v. *U.S.*, 229 U.S. 373 (1913), would, if enacted in the same words today, without explicit legislative guidance from the debates, the committee reports, the exordium of the statute, and other ancillary sources, not easily hurdle the barrier of the Fifth Amendment, and comply with recent precedents requiring definiteness as a *sine qua non* of valid criminal legislation.

To satisfy both modern judicial susceptibilities, and increased awareness of the right of prospective defendants to clear warning of what constitutes criminal conduct, courts, while not abandoning the possible *in futuro* widening or deepening of the Sherman Act with the growth of experience, and while not sacrificing the possible stretch of the statute in the future to keep pace with any scheme hereafter developed to evade its deliberately prospective broad reach, have tended to lay down, especially in connection with § 1 of the Sherman Act, so-called *per se* rules, (as, for example, the rule invalidating price-fixing agreements made to cover a substantial market), which are relatively precise and which form the basis of virtually irrebuttable charges of violation of the Sherman Act. *U.S.* v. *Paramount Pictures*, 334 U.S. 131; *Schwegmann Bros.* v. *Calvert Distillers*, 341 U.S. 384; *U.S.* v. *New Wrinkler, Inc.*, 342 U.S. 371. Such *per se* rules go beyond presumptions, burdens of proof, or

like procedural measures. They are substantive glosses constituting clear corrollaries.

With regard to § 2 of the Sherman Act, the trend has been less clear, and has reflected a greater degree of wariness or timidity on the part of judges. Yet in the two decades since the opinion of Judge Learned Hand in *U.S.* v. *Aluminum Co. of America*, 2nd Cir., 148 F. 2d 416 (1945), most of the cognoscenti have expected that a day would come when the Supreme Court would announce that where one or more persons acting jointly had acquired so clear a dominance in a market as to have the power to exclude competition therefrom, there was a *rebuttable* presumption that such power had been criminally acquired and was a monopolizing punishable under § 2. To be sure, the putative offender would be allowed to avoid or defeat this presumption if he bore the burden of proving that this share of the market was the result of superior skill, superior products, natural advantages, technological or economic efficiency, scientific research, low margins of profit maintained permanently and without discrimination, legal licenses, or the like. Cf. *U.S.* v. *United Shoe Machinery Corp.*, D. Mass., 110 F. Supp. 295, aff'd 347 U.S. 521. Such a shifting of the burden not merely of going forward, but of proof, such a rebuttable presumption rests on the by-now dozens of court records which make it quite clear that it is the highly exceptional case, a *rara avis* more often found in academic groves than in the thickets of business, where monopoly power was thrust upon an enterprise by the economic character of the industry and by what Judge L. Hand in *Aluminum* called "superior skill, foresight and industry." More than 7 decades of Sherman Act enforcement leave the informed observer with the abiding conviction that durable non-statutory monopolies (ones created with-

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out patents or licenses or lasting beyond their term) are, to a moral certainty, due to acquisitions of competitors or restraints of trade prohibited by § 1. They are the achievement of the quiet life after the enemy's capitulation or his defeat in inglorious battle.

To this Court it appears that the day has come for it, and more important for counsel, to proceed on the acknowledged principle that once the Government has borne the burden of proving what is the relevant market and how predominant a share of that market defendant has, it follows that there are rebuttable presumptions that defendant has monopoly power and has monopolized in violation of § 2. The Government need not prove, and in a well-conducted trial ought not to be allowed to consume time in needlessly proving, defendant's predatory tactics, if any, or defendant's pricing, or production, or selling, or leasing, or marketing, or financial policies while in this predominant role. If defendant does wish to go forward, it is free to do so and to maintain the burden of showing that its eminence is traceable to such highly respectable causes as superiority in means and methods which are "honestly industrial", as Judge Hand characterized the suppositious socially desirable monopolizer.

One other preliminary point does deserve note—and that is the relevance, if such there be, of defendant's intent. The issue is whether when the Government or other plaintiff charges a defendant with violation of the Sherman Act the complainant is under a duty to prove that his adversary had either *mens rea* or, more than that, the specific intent to violate the antitrust Acts. So far as concerns a charge of "monopolizing," unlike the lesser offense of "attempting to monopolize," it is not necessary, as both *Aluminum* and *United Shoe* declare, for the com-

plainant to prove more than that defendant intended to engage in the practices which maintained its market power. A defendant who monopolizes has "first of all * * * the intent to do the act, and secondly * * * a knowledge of the circumstances that make that act a criminal offense." Patrick [Lord] Devlin, lecture on "Statutory Offenses", republished in *Samples of Lawmaking* [London, 1962], pp. 67–82, at p. 78.

B. FINDINGS OF FACT

1. The gist of the Government's complaint is that defendants and co-conspirators (1) have been engaged in an unlawful combination and conspiracy to restrain, and (2) an unlawful combination and conspiracy to monopolize, and (3) have attempted to monopolize, and (4) have monopolized, interstate trade and commerce in what the Government denominates "the accredited central station protective service business."

2. The central station protective service (hereafter called "CSPS") business consists of maintenance of a central station, installation and maintenance of hazard detecting devices on the subscribers' premises, connection of these devices to the central station by wires leased from the local telephone company, and receipt and handling of alarms transmitted to the central station from the subscriber's premises.

3. CSPS, at present, involves customer concentration within specific areas. The chief reason is that alerted CSPS employees must promptly reach the scene of the alarm, and the present system does not have scattered task forces. Another reason is that high leased-line costs make it expensive to transmit signals for a great distance. Twenty-five miles from the CSPS central station has become the common radius. But this Court is not persuaded that, with

the advance in technology, there are any physical obstacles, such as electrical resistance, which now stand athwart the geographical expansion of central station coverage whenever business advantage, competitive conditions, and prospect of favorable profits make the course expedient.

4. A central service station, in its normal daily service operations, is physically independent of any other central service station. As already noted, its service is summoned, responds, and is consummated usually within a twenty-five mile radius. This is *not* to imply that the ultimate supervision is not nationally directed; nor that the system of operations, nor that the equipment used, nor the checking of equipment, nor the reports about the system have a purely local, individualized character, origin, or destination. On the contrary, the enterprise in appearance and reality, in financing, selling, advertising, purchasing of equipment, processes of management, and over-all planning is national; though, of course, the impact, as is true of every enterprise, is upon local specific points.

5. By settled practice, universal in the insurance business, underwriters of fire and burglary insurance (hereinafter called "underwriters") allow a reduction of premiums to customers having approved protective signalling systems. To that end, underwriters have established testing laboratories, have adopted standards, have organized periodical inspections, and have offered premium discounts, of almost standard nature, based thereon. Discounts accorded to accredited central station service subscribers tend to be noticeably larger than for users of other systems.

6. When a prospective subscriber requests CSPS service, the service company surveys the subscriber's premises, determines the number and type of required protective devices, and estimates the cost of needed

equipment and labor plus overhead expenses and often expected profit, all of which are usually used in computing an "installation charge." This charge is normally payable upon completion of the installation. Additional "annual service charges", usually payable periodically in advance, and calculated with reference to the equipment in service, telephone line rental costs, expected service including maintenance costs, and often expected profit, are also charged to the subscriber. Annual service charges are covered by contracts for periods of up to five years. Such a contract normally provides that at its termination the service company has a right to remove the equipment without refunding money or making any other payment to the subscriber.

7. In 1961 ADT provided CSPS to 121 units, located, respectively, in 115 cities, which, in turn, were located, respectively, in 35 states and the District of Columbia. In 92 of those 115 cities ADT has no CSPS competition.

8. Holmes provided CSPS to 14 units, each located in one of three cities—11 in New York City, 2 in Philadelphia, and 1 in Pittsburgh, in all of which it has CSPS competition.

9. AFA provided CSPS to 3 units, each located in one of 3 cities—1 each in Boston, New York City, and Philadelphia, in all of which it has CSPS competition.

10. As of December 31, 1961 in the United States there were, in addition to the alarm company defendants, 33 CSPS companies approved by one or more underwriters. Of those, each of 5 provided CSPS from 2 locations; each of the remaining 28 provided CSPS from only 1 location.

11. Of those 33 CSPS competing companies, each of 7 operated in one of 7 cities without CSPS competition; each of 23 operated in one of 23 cities where

it had CSPS competition from one or more of the alarm company defendants; 3 operated in cities where they had CSPS competition from others.

12. Business or other enterprises located in cities where there is CSPS have the option, of course, of using watchmen, watchdogs, automatic proprietary systems confined to one site (often, but not always), alarm systems connected with some local police or fire station, often unaccredited CSPS, and often accredited CSPS. There are business or other enterprises which in the same city exercise their options differently for different sites in that city. Thus, the Government itself in Washington uses at some public buildings a proprietary system; at others, accredited CSPS.

13. Examples of a particular enterprise changing from one alarm method to another are recited in the record; but, *significantly,* the preponderant shift is from the less integrated, advanced, expensive, and safe method of proprietary systems to accredited CSPS, thus indicating a customer recognition of a difference in market. This difference, to use a popular analogy, could be compared to moving into the class of the rich by changing from a compact six-cylinder car to a chauffeur-driven sedan. That is, there is a major product difference far transcending the obvious possible minimal cross-elasticity of demand.

14. It is also true that many central station companies, including defendants, furnish other forms of protection as well as accredited central station protective service. But this entry by one company into two or more adjacent markets has no substantial significance in defining either of those markets. Here a comparison may be drawn, by analogy, with the practice of General Motors Corporation in offering

customers a choice of a chauffeur-driven Cadillac or a Chevrolet Corvair. General Motors caters both to "the Privileged and the People" who, in Disraeli's phrase, form "Two Nations."

15. In 1960 the alarm company defendants together with all other CSPS companies obtained from United States manufacturers in various states over $12,000,000 worth of protection equipment for installation. According to page 6 of the Reply Brief for defendants, ADT, Holmes, and AFA, all this equipment was "manufactured * * * by the defendants," (presumably overwhelmingly by Grinnell.)

16. In 1961 the alarm company defendants provided CSPS service to thousands of subscribers of whom more than 900 were each located in a state other than the one wherein the servicing station was located. For this type of service the charges in the previous year, 1960, had included $677,598.15 for interstate transmission of signals over wires.

17. Up to this point, most of what has been stated relates primarily to the 3 alarm company defendants which are themselves in the accredited CSPS business. Grinnell, which is not in that business, nonetheless manufactures the alarms, sprinklers, and other equipment which may be denominated the machinery of the business. It is the principal supplier of the dominant companies in the market. And its economic interest as a supplier stretches beyond the immediate purchasers, that is, beyond the alarm companies, to the subscribers for CSPS because, as will be recited in later findings, some of Grinnell's compensation for its equipment takes the form of a share in the revenues received by the alarm companies from the fees paid to them by their subscribers.

18. Were it necessary to make such a finding, this Court would find that a primary motive of Grinnell

when it acquired 89% of the capital stock of AFA, and 79% of the stock of ADT was to secure an assured outlet for part of Grinnell's manufactured products. Investment purposes were also a motive.

19. However, in courts, unlike on the stage, the drama need not concentrate upon the parties' motives. As explained in the Introduction to these Findings of Fact, the law does not require even proof of intent, much less proof of a motive, where the wrong charged is monopolization, as distinguished from an attempt to monopolize. Moreover, such intent as must be proved to sustain the charge of an attempt to monopolize, or a conspiracy to monopolize, relates to the purpose to monopolize, not to the purpose of the monopolization.

20. Hence, it is quite adequate to demonstrate that Grinnell by its mere acquisition of control of companies which in combination have 87% of the accredited CSPS market has shown by its actions that it is possessed by what the mediaevalists called "the lust for power." No doubt, that lust is often in modern times characterized by materialism, that is, by the search for economic advantage, including financial rewards and outlets for manufactured products. Here it is indeed probable that Grinnell's and its president's acquisition of leverage over the market for accredited CSPS was in part motivated by a desire to increase Grinnell's manufacturing business and to assure a quiet market as an outlet for the sale of Grinnell's alarms, sprinklers, and other equipment. Yet, just as the Government has no obligation to prove defendants' motives, so the Court is under no duty to make findings with respect to those springs of action. Speculation as to motives may be favored by playwrights, prosecutors, and jurors, but judges do well to take in a Pickwickian sense Pascal's dictum

that "the heart has reasons of which the reason knows not."

21. Grinnell's relations to ADT, AFA, and Holmes are in a formal sense so structured that each of the affiliates of Grinnell had separate officers, and separate boards of directors which have independent identity. But the form is not a true mirror of the substance of the interrelation of the 4 companies.

21a. Since 1919 the balance sheets of Grinnell, submitted as part of Grinnell's reports to its stockholders, have shown, though in unconsolidated form, the results of the operations of all 4 defendants.

22. Since 1948 the president of Grinnell has been James Douglas Fleming, a man who joined Grinnell in 1919, and whose competence, character, and force of leadership stand revealed throughout the whole record, and most particularly in the testimony he candidly gave in open court. Until 1964, he stood in lonely eminence; there were no vice-presidents of Grinnell; nor others who had more than a closely delegated authority. A purely nominal change has been made in the current year. Four men who had been with Grinnell for 30 years but who had no other independent distinction were named vice-presidents.

23. Mr. Fleming, in addition to being president of Grinnell, sits upon the board of directors of each of the 4 defendants; and is chairman of the board of ADT. There is only one fellow director of ADT who is not an officer of Grinnell or of ADT. The situation is not noticeably different in any of the affiliated companies. In only one instance that Mr. Fleming could recall, has a board of directors of one of the affiliated defendants ever vetoed, or rescinded, or overridden any of his or Grinnell's management proposals or plans. In all major operations of all 4 defendants Mr. Fleming has illustrated the Emersonian proverb

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that "where MacDonald [or, as misquoted in the record (Tr. 732) MacGregor] sits, is the head of the table."

24. The personnel unity achieved through the dominant character of Mr. Fleming is buttressed in many ways. Under allocation agreements, executed in 1907, Grinnell as late as 1960 received over $1,200,000 from revenue produced by contracts made by its affiliates with one or more of the subscribers located in one or more of the 35 states and the District of Columbia. This sum was related to the same type of revenue which in the next year, 1961, produced for ADT, AFA, and Holmes more than $57,000,000 on account of CSPS charges those companies rendered to 93,272 subscribers located in 35 states and the District of Columbia.

25. Moreover, there is a generic similarity, though not an identity, in the contract forms, price lists, and instruction forms used by the 3 alarm company defendants. Many examples of each of these documents are sent regularly from the principal or home offices of the 3 alarm company defendants across state lines.

26. Furthermore, across state lines move to the principal or home offices of the alarm defendants reports, proposed contracts, payments, and other communications. Travel from one state to another on company business takes a substantial part of the working time of the principal officers of each of the defendants. This travel as well as the written communications produces a high degree of integration of the major policies of the 3 alarm company defendants, and results in effective control by Grinnell and by Mr. Fleming of all 4 defendants, their company subdivisions, their district sales offices, and their personnel.

27. In considering what is the relevant market, or what are the relevant markets, of interstate commerce, many of the factors heretofore detailed require consideration.

28. From the viewpoint of the type of service or product, the relevant market is not, as defendants contend, all protective systems, ranging from individual watchmen on the premises to the elaborate accredited central station alarm systems typified by the alarm company defendants' activities.

29. Quite plainly, non-automatic systems differ not merely in technology but in utility, efficiency, reliability, responsiveness, and continuity from all automatic arrangements. The difference between watchmen and watchdogs, at one end of the spectrum, and electrical systems at the other lies at the very heart of what is meant by such phrases as "the industrial revolution," "the machine age," "technological advance," and the "era of automation." Antitrust judges in their employment, no less than unskilled workers in their unemployment, recognize that markets for services rendered without tools and without education in the handling of them differ *toto mundo* from markets for services related to machines.

30. Nor, from the viewpoint of the type of service or product, can it be validly maintained that the relevant market embraces all automatic systems, including not merely accredited CSPS, but also local, auxiliary, and proprietary alarms and alarm systems unconnected with accredited central stations.

31. The accredited central station business is marked out by the very patterns of the alarm company defendants, who are the dominant factors in the protective industry, as being an identifiably separate market. Illustrative are the subscriber contracts with their installation and annual charges.

32. Many (though by no means all) of those who are engaged in the alarm company business, speaking in their capacity as experts (not necessarily with the special added status of authorized spokesmen making vicarious admissions binding defendants) have in correspondence and orally shown that that portion of informed opinion which this Court regards as the more credible recognizes the accredited central station business as a separate type of business.

33. Insurance companies allow their insured a far larger reduction of premium for accredited central station service than for other types of protective service. The annual charge paid by customers is several times as much for accredited central station service as for proprietary systems, and more than for any other types of protection service.

34. There are trade associations uniting under one roof accredited central station protective service companies, and not including the generality of all types of automatic alarm systems.

35. As already noted, customers regard a change from proprietary alarms to CSPS as an entry into what is qualitatively and monetarily a new class, as when one changes from a Volkswagen to a chauffeur-driven Rolls Royce, or from a boarding house to a hotel named in a hotel association listing.

36. Hence, for purposes of the antitrust laws there exists a specific, separate, identifiable, recognized market limited to accredited central station protective systems operated by largely automatic devices.

37. If the market, product-wise, be plainly defined as limited to accredited central station protective service connected with automatic devices, it is hardly less clear that, geographically, because of the very nature of those automatic devices and the services related thereto, and the patterns in which that industry has

developed, the market has a national interstate-commerce character.

38. It is not merely a congeries of segregated local or city markets. Of course, in addition to the principal national market, there may well be local markets of limited territorial area, or city markets, which in other litigation might be found in themselves to constitute, for purposes of the antitrust laws, definable, separate markets, wherein prohibited monopolies, or prohibited monopolization, or prohibited restraints, or prohibited attempts to achieve those forbidden ends might be enjoined or punished. But regardless of such local or city markets, there exists a national interstate commerce market in accredited Central Station Protective Services.

39. The existence of a national market is underlined by defendants' own national pattern of business, with its close articulation of control from the pinnacle of Mr. Fleming down the whole range of subordinate officers, and with its constant use of interstate commerce involving equipment, officers, salesmen, correspondence, even to an appreciable extent electric current carrying alarm signals from one state to another.

40. A fire or burglary may be local. Alarms may be sent to a point only a few blocks away. Relief may be dispatched from a local fire or police station. But the system of accredited CSPS rests upon the far-flung structure (a) of national planning, (b) of lapsed agreements covering activities in many states, (c) of inspection, certification, and reduction of rates by national insurers, (d) of defendants' national schedules of prices, rates, and terms, and (e) even, on occasion, of national special discount prices to a particular customer who operates multi-state enterprises.

41. Grinnell and the affiliated companies included in its balance sheet do not pretend to have a purely local

status when they solicit customers, or report to stockholders, or raise funds for their business purposes, or advertise their merits, or preen themselves on their conspicuous success.

42. When all the rest can see a typical American national business enterprise flourishing in an interstate market, federal courts too get the signal and can hear the alarm sounded when such a market is subject to restraint of trade or monopolization.

43. From the foregoing detailed facts there emerge as ultimate facts, found by this Court, first, that as the complaint alleges, "the business of supplying and installing protection devices on the premises of subscribers, maintaining such devices and furnishing to subscribers protection from fire, burglary, or other hazards, through central stations accredited for such service by insurance inspecting and rating organizations" is a trade or industry which constitutes part of the commerce among the several states subject to regulation by Congress under Article I, Sec. 8, cl. 3 of the United States Constitution, and indeed regulated by Congress by virtue of the Sherman Act, and second, that the accredited CSPS business which is performed by each of the 3 alarm defendants and is controlled by defendant Grinnell is, likewise, part of interstate commerce subject to Congressional regulation and indeed regulated by the Sherman Act.

44. During the period 1957–61 defendant alarm companies' share of the total national accredited CSPS market ranged from 87% to 91% and ADT and Holmes had 87% to 90% of so much of the central station burglar alarm business as was "certificated" by all underwriters' laboratories.

45. However, it is only fair to add that from 1957 to 1961 defendant alarm companies' shares of central station subscribers and of revenue therefrom showed

a slightly declining trend. Moreover, there is no persuasive evidence that any particular prospective entrant has been unable to begin operations, or that any specific CSPS firm has failed or been driven out of business. The most that can be said is that some competitors complain of what they regard as unsatisfactory profits.

46. Defendant alarm companies do not have unfettered power to control the price of their services. Even where they have no competition from other CSPS companies, they have not always been able to receive the standard they have set for themselves, the so-called "Minimum Basic Rates" (hereafter called "MBR"), or annual service charges. This is due to the fringe competition of other alarm or watchmen services.

47. Yet this ceiling imposed by fringe competition and this implied cross-elasticity of demand lose almost all their significance when set against the fact that, because of their national operations, one or more of defendant alarm companies choose in some areas to operate at a loss. ADT's own counsel, in both brief and oral argument, stressed, paradoxically, that it operated 20 *deficit* offices in cities with no other central station. Counsel seem not to appreciate that this fact is a strong point against defendants. It conclusively proves that defendants enjoy national monopolistic power which permits one of the conspirators to occupy local markets where no independent CSPS station would long function and to extend to each of them the combination's national monopolistic control. *Hardly any indicium of monopoly power is more persuasive than the continued capacity of the asserted monopolistic combination to sustain offerings at a loss either in particular areas or in particular services or products.*

48. Defendants faced with proof of the overwhelming share of the accredited CSPS business in the hands of the alarm company defendants have offered no evidence to rebut the presumption that this share was the result of an attempt to monopolize and have not sought to maintain their burden of proving that their share is attributable primarily to their skill, efficiency, and foresight, or to like factors of obvious social utility. On the contrary, the evidence rather plainly indicates that acquisitions, both within and outside the relevant market, were important sources of the market power achieved by the alarm company defendants.

49. ADT purchased in 1946 for $282,395.02 Reliance Alarm Co., a Detroit company. In 1955 ADT acquired for $300,000 General Alarm Corp. of Boston. It is true that before making the latter purchase ADT informed the Department of Justice; but it is incontrovertible that whatever else the Department's silence indicates, no inference can be drawn that the Department had, or attempted to exercise, authority to treat that disclosure as proof that ADT was growing larger by virtue solely of its skill, efficiency, foresight, or like factors of obvious public benefit. Nor did the Department of Justice suggest that when after acquiring General Alarm Co. of Boston, ADT dismantled it, ADT failed to reveal in the most flagrant way its intent to attempt to monopolize.

50. The Detroit and Boston concerns just mentioned operated approved central station protective systems when they were acquired. Other companies which did not operate such systems and hence admittedly were not in the market directly at issue in this case were also acquired by ADT. In its answer ADT admitted that it acquired 22 protection companies. Going further, ADT's counsel at p. 9 of their Reply Brief

admit that ADT purchased and dismantled in 1913 the Still Alarm Co., Cleveland, and in 1959 Federal Automatic Alarms, Albuquerque; and that ADT in 1954 purchased the subscriber equipment of Globe Electric Protection Company, Atlantic City. What is significant is NOT that those 3 concerns fall within or without the relevant market here in issue, for plainly they fell outside that market, but that the acquisitions indicate that ADT's growth, far from being attributable solely to superior techniques and methods of administration and like so-called honestly industrial means, owes more than a little to the special kind of appetite which has characteristically revealed a monopolistic temper and explained a monopolistic growth.

51. It is unnecessary to pause for elaborate description of the other acquisitions of ADT or Holmes or AFA, if any, or of the occasional accompanying covenants by sellers not to compete with the alarm company defendants. Enough has been noted to see why it is that defendants have not borne, and cannot bear, their burden of showing that their proportion of the market is a mere tribute to their perfect performance.

51a. Another significant factor in defendants' growth in the share of the national market were the by-now lapsed agreements during the period 1904–1954 between the alarm company defendants before they were affiliated, or between alarm company defendants and actual or potential competitors. Those agreements provided for the orderly allocation of geographic areas and classes of CSPS. Though the agreements are no longer legally effective, their influence in forming business patterns remains to a discernible extent.

52. One of those agreements was the Burglar Alarm Agreement of September 28, 1906 between ADT and

Holmes, then unaffiliated. ADT conveyed to Holmes all burglar alarm business, including subscriber contracts and installed devices, in New Jersey, Maryland, Delaware, the District of Columbia, 8 counties of New York (New York, Richmond, Kings, Queens, Nassau, Suffolk, Westchester, and Rockland), 6 counties in Pennsylvania (Philadelphia, Delaware, Chester, Montgomery, Bucks, and Allegheny), and so much of Connecticut as lies within 33 miles of New York City. In those areas ADT agreed forever to refrain from engaging in central station burglar alarm service. Holmes agreed forever to refrain from engaging in any type of protection service outside of those areas; and within those areas to limit itself to burglar alarm service, and, in the case of financial institutions, to nightwatch service. Most of the pattern thus established continued, without legal buttress, at least until this suit was brought—for, as of December 31, 1961, Holmes did not render service outside of the defined area; nor within the area did it serve a single central station fire alarm subscriber.

53. Another series of agreements were the Fire Alarm Agreements of April 29, 1907 among Grinnell, ADA, AFA, and the non-defendant Automatic Fire Protection Company (hereafter called "AFP"), all then unaffiliated. (a) AFA received an exclusive right to contract with subscribers for central station sprinkler supervisory and waterflow alarm service (hereafter called "SSWF") for Greater New York, Philadelphia, and Boston and Charlestown, Massachusetts. AFA agreed to refrain from engaging in nightwatch and burglar alarm service in those four cities, and to refrain from all other types of CSPS elsewhere in the United States. (b) AFP received an exclusive right to contract for SSWF service elsewhere than in the 4 named cities. (c) ADT received

the exclusive right to render nightwatch and burglar service throughout the United States, and agreed to permit AFA and AFP in their respective territories to connect SSWF alarm service to ADT's central stations. (d) Grinnell agreed to furnish all SSWF alarms for contracts obtained by AFA and AFP, and itself to refrain from invading the assigned territories. (e) Among the 4 named companies provisions were made for AFA to receive 25% of the SWWF alarm revenue from its territory; ADT to receive 50% of the SWWF alarm revenue from both AFA and AFP territories; and Grinnell to receive 25% of the SWWF alarm revenue from both AFA and AFP territories. January 1, 1949, ADT purchased all AFP's rights under the agreements. Much of the pattern established under the 1907 agreements continued, without legal buttress, at least until this suit was brought—for, as among defendants, ADT continues as the exclusive source of central station nightwatch and burglar alarm service, AFA as the exclusive source of central station nightwatch and burglar alarm service, AFA as the exclusive source of central station fire alarm service in New York, Philadelphia, and Boston; and Grinnell does not furnish the types of service originally precluded by the 1907 agreements.

54. Grinnell and ADT and the Rhode Island Electric Protective Company (hereafter called "RIEP") have agreed that RIEP shall have the exclusive right to render CSPS within Rhode Island, at prices not less than those established by ADT for like service, and with certain devices supplied by Grinnell. RIEP shares its revenue with ADT and Grinnell. This agreement is presently effective. Admittedly, this relationship is a mere makeweight in indicating Grinnell's and ADT's role in controlling the approved CSPS market, its monopolistic power therein, and its intent to monopolize.

55. Although defendants have a "Schedule of Minimum Basic Service Charges" and "ceiling prices" which constituted their standard rates, they depart therefrom when they encounter actual or threatened effective competition. Departures have included (a) frequent quotation of prices with an annual service charge less than 100% but not less than 80% of the minimum basic rate, and with an advance service charge less than 100% but not less than 60% of the minimum basic charge, (b) occasional installation of CSPS without charge, (c) rarely, successive bids, each progressively lower than the so-called standard minimum basic rates, (d) at least once, the reduction of rates at all locations of a chain-business account to preclude a competitor of defendants from securing in one city an account of that chain, and (e) infrequently, the deferment of prompt payment of installation charges. Sometimes these departures have merely met the prices of competitors; but, on other occasions, rare though they were, the departures undercut or beat competitors' prices.

C. CONCLUSIONS OF LAW

1. From the foregoing findings of fact it is transparent that during their growing period the alarm company defendants in several respects violated the restraint of trade provision of Section 1 of the Sherman Act.

2. The alarm company defendants engaged in *per se* violations of Section 1 when they, being the most substantial and the recognized dominant enterprises in the CSPS industry, entered into written agreements, now admittedly several decades old and formally no longer effective, which allocated geographic markets and classes of customers and fixed minimum prices for types of service. Grinnell formally took a share

directly or indirectly in the revenues from these agreements. When the agreements expired, defendants, including Grinnell, continued most of the arrangements once founded on those unlawful legal instruments.

3. Because of the formal expiration of the agreements, it, *conceivably,* might be too late for the Government now to seek against defendants relief from the legal instruments as such. But the folds in the industrial scene have remained even though the technical pressure of the legal instruments has been withdrawn. Channels of activity begun under legal formalities became habitual, and, even after the formalities had expired, in most cities have continued to carry the same menace to free trade. Injunction against continued adherence to the patterns formed in violation of law is not merely appropriate but necessary to accomplish the declared objects of the antitrust laws.

4. Furthermore, the alarm company defendants resorted to restraints of trade prohibited by Section 1 of the Sherman Act when, faced with competition, they, being in a dominant position, manipulated their own prices to forestall competition. Injunction against pricing discriminatorily utilized by a monopolistic combination to forestall competition is appropriate and necessary.

5. The restraints of trade just mentioned were a chief avenue by which the alarm company defendants previously attempted to monopolize, and now do conspire to monopolize, and do monopolize, the national market in the accredited CSPS industry, all in violation of Section 2 of the Sherman Act.

6. Perhaps even more effective as a means used to attempt to monopolize, and eventually to monopolize, the industry, in violation of Section 2 of the Sherman

Act, were the alarm company defendants' acquisitions of competing companies, more particularly in the light of the dismantling of some of the acquired service stations.

7. Grinnell's acquisition of so high a percentage of stock of the companies engaged in the monopolization, and Grinnell's direction of the policies of the 4 companies as a whole toward the maintenance of the monopolization constituted a violation of Section 2.

D. OPINION ON LIABILITY

1. At this late date it is hardly necessary to do more than briefly recapitulate what is meant in Sherman Act parlance by the concepts "to attempt to monopolize," or a "conspiracy to monopolize" or "to monopolize."

2. To succeed in a Section 2 case plaintiff must prove that the putative monopolist or monopolists sought to achieve or achieved the economic power, even though unexercised, to control prices or production in a relevant market, or to exclude competition therefrom. Proof may be direct or indirect.

3. One indirect method to prove the requisite power is to show defendants' occupancy of an overwhelming (but not mathematically definable) percentage of the market, unless that position—or, as it is called, "share of the market"—is shown by the supposed monopolist to be attributable exclusively to his skill, efficiency, foresight, or like affirmatively laudable business conduct. Unless he maintains the burden of proving himself within the exception, the occupant in the dominant position stands condemned.

4. What degree of occupancy, what share of the market, is indicative of monopolistic control depends on a judgment based upon all aspects of the particular market under review. But while close cases can be

supposed, no informed student of prior decisions involving Section 2 of the Sherman Act could doubt that on this record defendants occupy a share of the CSPS market far beyond the line justifying a presumption of monopolistic power. The percentage is so high here as to need no explication. And, as the conclusions of law already set forth state, this share of the market rests not on the skill, efficiency, and foresight of defendants, not even on their neutrally normal business methods, but on violations of *per se* rules governing restraints of trade and on acquisitions indicating that that growth was a response to external grasp, not to internal grip.

5. Nor in this case need we consider whether there are present all the various policy considerations advanced from time to time by legislators, judges, and academicians to justify or interpret the antitrust prohibition of monopoly.

6. Of course, in the relatively small accredited CSPS industry it would be nearly ridiculous to rest the present application of the Sherman Act upon a literal interpretation of the economic and philosophical postulates offered in great antitrust cases in celebrated opinions by Mr. Justice Brandeis, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Brennan, or Judge Learned Hand. Here we are dealing with an industry which as a whole involves fewer individuals and less capital than, let us say, any one of the three leading manufacturers of automobiles, of steel, or of electronics, or any one of the three largest chain retain store systems, insurance companies, or banks. The activities of Grinnell and its affiliates, no matter what their intent or their achievement, could hardly be said to have a significant potential effect comparable to those giants' maneuvers in, at least by possibility, dwarfing men, or interfering with their creative,

political, or spiritual possibilites, or determining their economic fate, or depriving them of the illusion or reality of free choice in an open society.

7. What justifies this application of Section 2 of the Sherman Act to these defendants is not avoidance of of "the curse of bigness," or the fear that men will be converted into robots, or the dread that society will be stratified into trusts more burdensome than feudalism, or colonialism, or socialism, or communism, or some other despised polity, or a concern lest giants larger than the state itself shall lead us into tyranny or into the need of a socialistic regimen as an antidote to private despotism.

8. It is even doubtful whether we can say that here we have the danger of a business becoming slothful, routinized, sleepy, or wanting in alertness, initiative, and progressiveness, as a result of the quiet life sought and usually achieved by a monopolist.

9. Nor can it be truly asserted that here we are faced in microcosm with Acton's fancied or real disease—the corruption of power. Mr. Fleming and his associates are not likely to be on anyone's list of Napoleons. Nor is Grinnell's corporate power "corrupt" or "imperial."

10. In cases like this where the Sherman Act ban against monopolizing is invoked against defendants who have secured dominance of a small industry by imposing unlawful restraints of trade and by a steady stream of acquisitions of competitive enterprises, the usual rhetoric is quite out of place. All that is at stake here is the rooting out of a plant of minor importance in the rich forest of the American economy, not because it overshadows all of us, or even many of us, but because it represents an ultimate growth from seeds which have been declared unlawful. Congress in Section 1 of the Sherman Act outlawed the means

and in Section 2 outlawed the end achieved by those means.

11. In most, though not all, situations relief against the monopolization forbidden by Section 2 could be achieved through a proceeding under Section 1 couched in the form of an attack on restraints of trade. But this is not always true. Proceedings under Section 1 may come too late: for example, the formal restraints may have been withdrawn, or laches may have intervened, or, as in *U.S.* v. *United Shoe Mach. Corp.*, D. Mass., 110 F. Supp. 295, hoary precedents sustaining as valid what the current law now regards as undoubted restraints of trade may preclude the Government from securing an injunction against the restraints as such. Yet though the Government may be barred from getting under Section 1 relief directly against the restraints, it may, nonetheless, under Section 2 get relief against the consequences of the restraints if, but, of course, only if, they have gone so far as to involve a continuing monopolization. Having failed to nip the bud, the Government may still pluck the flower of evil.

E. OPINION ON REMEDY

1. Even if this is not a "big case" in any sense (except in the Government's unnecessary volume of exhibits disclosing chiefly the Department of Justice's unwillingness to accept the notion that in the second half of this Century, lower Courts, educated by the Supreme Court, can get the point that an antitrust case really turns on a relatively manageable set of facts, on a few by-now clear legal issues, and on a presentation worthy of Mr. Justice Holmes' advice to "Strike for the jugular"), nonetheless, the findings of fact and the conclusions of law demand a decree of scope and strength.

2. This is no border-line case. A man of the capacity, sophistication, and, possibly, risk-taking temperament of Mr. Fleming cannot have been ignorant that the companies he controlled had in the most flagrant way violated the clearest aspects, the so-called *per se* rules, of the Sherman Act and were continuing to follow patterns conceived in crime. Maybe he shrewdly weighed business advantage against business disadvantage, and with keen appraising eye estimated the law's delays, the fluctuating policies of the Department of Justice, the improbability of private suitors with adequate funds and resolution, the reluctance of courts to apply surgical measures to cut deep into already established industrial patterns, and, in any event, the plausibility of the oft-cited, if strangely inapt, metaphor that one cannot unscramble eggs.

3. Whatever may have been the calculation of defendants or their officers, this Court has determined that this case requires a three-pronged judgment adequate to uproot the evil of a long-effective monopolization.

4. First, defendants, including the controlling Grinnell Corporation, shall be specifically directed to cease and desist from restraints of trade in which the record shows that the alarm companies have engaged directly or indirectly. This decretal provision rests expressly on the ground that the restraints were from their first imposition a violation of Section 1, and, alternatively as well as cumulative, on the ground that they are a continuing cause of the monopolizing prohibited by § 2 of the Sherman Act. To make effective this cease and desist order which, *inter alia,* precludes the alarm company defendants from manipulating prices and terms of sale or servicing so as to bring against competitors defendants' monopolistic power, the alarm company defendants shall be required, until

further order of the Court, to file with the Antitrust Division of the Department of Justice such *standard* lists of prices and terms of sale or servicing as, *at their uncontrolled pleasure,* they from time to time adopt, and also to file a record of every quotation, written or oral, departing from those standard lists, such filing to reach the Division within two weeks of the quotation. It is not the purpose of this direction to give the Government the right to fix or even to object to any alarm company's standard price list. It may select any figures it likes. And at any time it may change the standard schedule, if this is done for all customers of like kind. But if an alarm company defendant seeks to depart in individual instances from its standard schedule, then it must report the departure and run the risk of being charged with invidious, illegal discrimination. The cease and desist order shall prohibit each defendant from acquiring the stock, assets, or business of enterprises in the accredited CSPS industry. External growth is the badge of the monopolist, as internal growth is the mark of the free life.

5. Second, no later than April 1, 1966, Grinnell shall file with this Court a plan of divestiture under which it shall dispose of all of its stock in each of the other defendant companies. Such plan may, at the election of Grinnell, provide for the stock to be sold, or for the stock to be distributed to shareholders of Grinnell, or for some combination or reasonable variation of those two methods. The date is purposely set far ahead to permit an appeal to the Supreme Court, and to let defendants consider all tax and corporate problems.

6. Third, to insure that the reforms imposed by this decree are not thwarted by a leader of great capacity but of less than an admirable record of compliance with well-known prescriptions of antitrust

law, and to guarantee that there is an entirely effective breaking-up of the channels of restraint and monopolization which the present management of Grinnell has dug so deep into the pattern of the accredited CSPS industry, and to make certain that the general public is not further prejudiced by the continued management of defendants by one who has demonstrated defiance of legal prohibitions, no defendant, after April 1, 1966, shall continue in employment as officer, director, employee, consultant, agent, or otherwise James Douglas Fleming; but nothing herein shall preclude any defendant from fulfilling any pension or like purely financial agreement it now has with Mr. Fleming. Full notice that this Court contemplated this decretal provision was given to defendants by this Court during the trial and on the very day when Mr. Fleming gave his extensive, uninterrupted account of his role in the conspiratorial combination. This provision shall not be construed as in any respect retroactive or punitive; its interpretation shall be strictly prospective and prophylactic; nor shall it be regarded as directed against Mr. Fleming, but against defendants' use of Mr. Fleming, the leader who brought them to this end and cannot be expected to regard a reversal of his policies as suitable marching orders. While this Court does not feel that it can leave Mr. Fleming in the saddle, there is not intended in this decretal provision, or in any other part of this opinion and judgment any suggestion that Mr. Fleming lacks financial integrity or honesty of the usual type. He is an "honest man" after the manner of Theodore Roosevelt or Norman Hapgood. See Learned Hand, on Robert P. Patterson, in *The Spirit of Liberty* ed. by Irving Dilliard [Vintage Books, N.Y. 1959 ed.], pp. 200–208, at page 205. He is undoubtedly a man whose virtue the Scotch would ap-

preciate, and of a VIRTÚ the Italians would applaud. But he appears on this record to have been for well over a decade and a half the vigorous captain of the defendants' conspiracy to monopolize.

Judgment in accordance with findings of fact, conclusions of law, and opinions on liability and remedy.

APPENDIX B

United States District Court, District of Rhode Island

Civil Action No. 2785

UNITED STATES OF AMERICA

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE

FINAL DECREE

This cause having come on to be heard, and the Court having fully considered the evidence and arguments, and having filed its Findings of Fact, Conclusions of Law, and Opinions on Liability and Remedy, it is hereby

Ordered, Adjudged, and Decreed that:

1. Grinnell Corporation (hereinafter called Grinnell) and the three Alarm Company Defendants (as they are hereinafter called), American District Telegraph Company, Automatic Fire Alarm Company of Delaware, and Holmes Electric Protective Company are, severally and jointly, found to have violated § 1 of the Sherman Act by restraining, and continuing to restrain, trade in the national market of insurance accredited central station protective service (hereinafter called the "designated market"), and to have violated § 2 of the Sherman Act by attempting to

monopolize, by conspiring to monopolize, and by monopolizing that designated market.

2. Grinnell and the Alarm Company Defendants and all acting in behalf of them or any of them are hereby enjoined from further restraining trade, or attempting or combining to restrain trade, in that designated market and from further attempting to monopolize, or conspiring to monopolize, or monopolizing that designated market. To make this provision effective, each of the Alarm Company Defendants shall, until further order of the Court, file with the Antitrust Division of the Department of Justice such standard lists of prices and terms of sale or servicing as, at its uncontrolled pleasure, it from time to time adopts, and also to file a record of every quotation, written or oral, departing from those standard lists, such filing to reach the Division within two weeks of the quotation. Neither Grinnell nor any of the Alarm Company Defendants shall acquire the stock, assets, or business of enterprises in the designated market.

3. No later than April 1, 1966, Grinnell shall file with this Court a plan of divestiture under which it shall dispose of all of its stock in each of the Alarm Company Defendants. Such plan may, at the election of Grinnell, provide for the stock to be sold, or for the stock to be distributed to shareholders of Grinnell, or for some combination or reasonable variation of those two methods.

4. To insure the effective performance of this decree, neither Grinnell nor any of the Alarm Company Defendants shall, after April 1, 1966, continue in employment, or employ, James Douglas Fleming as officer, director, employee, consultant, agent, or otherwise. Nothing herein shall prohibit any defendant from fulfilling any pension or like purely financial agreement it now has with Fleming; nor shall anything herein require Fleming to divest him-

self of any security, stock, or bond in or of any company, whatsoever.

5. Defendants shall pay the costs of this case.

6. Jurisdiction of this cause is retained for the purpose of enabling any party to apply to this Court for further orders or directions for the correction, construction, or execution of this Decree, including, without limiting the generality of the foregoing the implementation of the divestiture provided above.

United States District Judge for the District of Massachusetts, sitting by special designation as a Judge of The United States District Court for the District of Rhode Island

November 27, 1964, 9:00 a.m.

APPENDIX C

In the United States District Court for the District of Rhode Island

Civil Action No. 2785

UNITED STATES OF AMERICA, PLAINTIFF

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, DEFENDANTS

DEFENDANTS' PROPOSED CHANGES IN PLAINTIFF'S PROPOSED FORM OF JUDGMENT.*

Plaintiff, United States of America, having filed its complaint herein on April 13, 1961; the defendants,

*This proposal follows the Government's proposal verbatim, with brackets indicating proposed deletions and italics indicating proposed additions.

by their attorneys, having appeared and filed their answers to such complaint denying the substantive allegations thereof; and the parties, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting an admission by any party in respect of any such issue of fact or law [usable in other litigation by any party other than the plaintiff].

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto [and upon admissions of the defendants made for the sole purpose of establishing, in any suit for damages filed by the plaintiff based upon violations alleged in the complaint herein or in connection with any proceedings brought to modify, vacate or enforce this Final Judgment, that the defendants have violated the antitrust laws as alleged herein], it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief can be granted against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "ADT" shall mean defendant American District Telegraph Company, a New Jersey corporation;

(B) "AFA" shall mean defendant Automatic Fire Alarm Company of Delaware, a Delaware corporation;

(C) "Holmes" shall mean defendant Holmes Electric Protective Company, a New York corporation;

(D) "Grinnell" shall mean defendant Grinnell Corporation, a Delaware corporation;

(E) "Service" shall mean central station electric protective service, i.e., the service of furnishing protection of premises against fire, burglary or other hazards by installing on the premises devices, wire or other apparatus designed to detect any such hazards and to transmit alarm and supervisory signals to central stations, located off the protected premises, which are approved by insurance inspection and rating organizations for the furnishing of such protection;

(F) "Equipment" shall mean all apparatus, including wires, installed in the premises of subscribers for the purpose of furnishing service;

(G) "Devices" shall mean all equipment and apparatus used in furnishing service;

(H) "Central station corporation" shall mean a company organized *for the purpose of furnishing service* [and equipped to furnish service, including an approved central station and all necessary equipment];

(I) "Person" shall mean any individual, partnership, firm, association, corporation or other legal entity; *however any defendant, its employees and wholly-owned subsidiaries shall be considered one person for the purposes of this Final Judgment;* and

(J) "Subsidiary" shall mean any person controlled by or more than fifty percent of whose voting stock is directly or indirectly controlled by a defendant.

III.

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assignees, and to their respective officers, directors, agents, servants and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. Each defendant is ordered and directed to take such steps as are reasonably appropriate to procure compliance by its subsidiaries, officers, directors, agents, servants and employees with the terms of this Final Judgment. Any person acquiring *stock or* assets pursuant to Section VIII shall not be considered a successor *or assignee* bound by the terms of this Final Judgment. *This Final Judgment shall not apply to service rendered outside the United States.*

IV.

Defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to or claiming or maintaining any right under any contract, agreement, understanding, plan or program with any other person *engaged in furnishing service* to:

(A) Eliminate or restrain competition in the furnishing of service;

(B) Allocate or divide territories, markets, fields or customers in the furnishing of service;

(C) Fix or maintain charges, methods of charging or any terms or conditions for the furnishing of service to any third person;

(D) Exchange information *not released to the trade generally* concerning charges, method of charging or other terms and conditions of sale at or upon which service is to be furnished to any third person;

(E) Submit noncompetitive or collusive bids or quotations for furnishing service;

(F) Refrain from bidding or quoting on furnishing service;

(G) Hinder, restrict, limit or prevent any person from obtaining service;

(H) Jointly participate in the revenues derived from the installation of equipment or the furnishing of service; or

(I) Restrict or limit the sale of any devices used in the furnishing of service.

Nothing contained herein shall prohibit defendants from entering into otherwise lawful patent, trade secret or technical information agreements.

V.

Defendants are jointly and severally enjoined and restrained from:

[(A) Taking any action having the effect of excluding or foreclosing any person from engaging in furnishing service;]

(B) Discriminating in the furnishing of service by furnishing any service at unreasonably low charges, for the purpose [or with the effect] of destroying competition or eliminating a competitor;

(C) Acquiring, directly or indirectly, the assets, business, goodwill, any of the corporate stock or any financial or beneficial interest in [(1) any person engaged in furnishing service in any business district or area where any defendant is furnishing or is attempting to furnish service; or (2)] any person engaged in furnishing service [in any other business district or area] except upon establishing to the satisfaction of this Court that such acquisition will not substantially lessen competition or tend to create a monopoly in the

furnishing of service in any area of the country or the business district or community involved;

[(D) Furnishing service to any customer in an area where the defendant is the only source of such service at a rate in excess of the annual average of that charged by defendant for the same type of service in all of the cities where there is another source for such service;]

(E) Entering into any contract or agreement for the furnishing of service *or any renewal thereof whereby the subscriber is obligated to accept service for a period* in excess of one year's duration; *any contract for a period in excess of one year shall give the subscriber the option to terminate on any anniversary date of commencement of service upon payment of any difference between the "full term" contract rate and a specified "short term" rate, making reasonable allowance for the difference in the cost of supplying service on a short term basis.*

[(F) With respect to contracts for the furnishing of services entered into prior to the date of entry of this Final Judgment, failing to notify such customers that they may, without penalty, terminate such contract one year from the initial date thereof or ninety (90) days from the date of notification, whichever is later;]

(G) Enforcing, entering into or claiming any rights under any contract, agreement or understanding that any person will not engage in furnishing service;

(H) Tying or conditioning, by varying rates or otherwise, the furnishing of service at one location to or upon the furnishing of service to the same customer at another location;

(I) Bidding for the furnishing of service to any governmental body or agency thereof, where the defendant has participated in the preparation of the

specifications for the job and such specifications are [so drawn as to effectively preclude] *drawn for the purpose of precluding* any person engaged in furnishing service from submitting a responsive bid on that job;

(J) Paying any commission or other remunerations to any agent or representative of any insurance company, or companies engaged in the installation of automatic sprinkler systems, for leads or information as to prospective customers for service;

[(K) Soliciting any contract for the furnishing of service except on a basis whereby the local personnel of ADT solicits customers in the area in which they are stationed, rather than soliciting chain accounts at the headquarters of such accounts.]

The provisions of paragraphs (C), (E) and (J) of this section shall not apply to AFA and Holmes.

VI.

(A) *Any* agreements under the terms of which Grinnell, ADT, AFA, or Rhode Island Electric Protective Company ("RIEP"), jointly furnish equipment and/or service to subscribers or participate in revenues from service contracts are ordered [cancelled] *terminated* by the parties thereto *from and after a date which shall be as soon as possible consistent with the parties' responsibility to maintain continuity of service to subscribers, and no later than two years from the date hereof, and thereafter neither Grinnell (as to RIEP) nor ADT (as to AFA and RIEP) shall have any interest in revenues derived from subscribers' contracts heretofore obtained or operated by AFA or RIEP. Upon such termination Grinnell and ADT are to divest themselves by sale to RIEP and AFA, respectively, of all of the devices owned by them and installed upon the premises of*

AFA's and RIEP's subscribers, and are to be compensated for the value of said devices in the amounts specified in the agreements heretofore reached between the parties.

(B) *Grinnell, ADT and AFA are ordered and directed to terminate the device sale agreements between them dated February 18, 1954 and to commute to a lump sum payment (payable in installments at the option of the parties) the obligations of AFA and ADT to Grinnell arising thereunder.*

[(B)] (C) Defendants are jointly and severally enjoined and restrained from renewing, adhering to or maintaining any contract or agreement cancelled pursuant to subsection (A) above or entering into any like or similar contract or agreement with each other.

VII.

[Defendants are each] *ADT is* ordered and directed:

(A) To [assign] *offer* to each service customer *upon entering into any new or renewal service contract* all right, title and interest to equipment installed or to be installed on the premises of the customer, [without further charge as to existing installations and, as to future installations, for such defendants' regular installation charge] *at reasonable prices, terms and conditions which shall not be substantially more advantageous to ADT than its charges, terms and conditions for rendering service when there is no sale;*

(B) On request of any person desiring to furnish service *to others* in any area where [the defendant has the only central station] *ADT is the sole source of service,* to permit, on reasonable terms and conditions, signals from the premises of subscribers of such person to be transmitted to the central station of [the defendant] *ADT* and, further, to advise such

person promptly of any hazard-indicating signals received from such premises; *provided, however, that no such person shall be entitled to continue to so use the ADT central station for a period in excess of two (2) years;*

(C) On request of any person, to sell upon nondiscriminatory terms and conditions any devices manufactured by such defendant for use in furnishing service.

Defendants shall not be required to sell (i) confidential security devices, the effectiveness of which might be compromised by such sale, or (ii) devices made for any agency of the United States Government which will not consent to such sale.

The provisions of paragraphs (C) and (E) of Section V and of paragraphs (A) and (B) of this *Section shall remain in effect for a period of ten (10) years from the date of this Final Judgment, at the end of which time they shall terminate unless the Court finds that their continuation is required to preserve or maintain competitive conditions.*

VIII.

It is an objective of this Section and Final Judgment that competitive conditions be restored or created, and the dominant position of the defendant ADT be curtailed, in the furnishing of service. To this end, defendants ADT and Grinnell shall take such steps as may be necessary to achieve that objective at least to the extent specified in the Appendix A hereto. Defendants ADT and Grinnell shall, *at their option and* as specified in Appendix A either (a) [establish central station corporations] *divest themselves of the stock in a newly formed or existing corporation* in each *such* city, [each of] which *corporation* shall [be fully equipped and capable of furnishing services]

have service revenues at least to the extent specified in Appendix A, [and divest new corporations'] *by distributing it to the stockholders of ADT and Grinnell or by selling it* upon the [best] *most profitable and reasonable* terms obtainable to a person not affiliated in any manner with [any defendant] *ADT or Grinnell,* or, (b) sell and transfer upon the [best] *most profitable and reasonable* terms obtainable, to any such person, service contracts in *at least* the amounts specified, *together with equipment.* The types of service contracts so sold or transferred shall be *reasonably* in the same proportion as the types of all service contracts held by ADT in the city involved, or served by the ADT central station in the area where the customers are located, *and shall only be sold or transferred with the written consent of the subscriber, which ADT shall use its best efforts to obtain.* The action and transactions required by this Section shall be completed within six (6) years from the date of entry of this Final Judgment; approximately one-third by the end of the first two years and another one-third by the end of four (4) years.

In a city where any central station corporation must be established, an eligible purchaser shall have the option of acquiring [the corporation without the central station equipment and, if not desired, defendants shall not be required to include that equipment in the assets of the corporation.] *from ADT, on reasonable terms, central station devices, or of using the ADT central station as set forth in Section VII(B) of this Final Judgment.*

Paragraph (E) of Section V and paragraph (A) of Section VII shall not apply in any locality listed in Appendix A until divestiture has been made therein.

At the end of ten (10) years from the date of entry of this Final Judgment, unless [the defendants] *ADT or Grinnell* can show to the satisfaction of this Court that effective competition has been restored or established in the furnishing of service [in each and all of the cities listed in Appendix B hereto and in the United States in general, the Court shall enter such order or orders as it deems necessary requiring the same or similar action to achieve the objective of this Section and this Final Judgment in any or all of the cities listed in Appendix B hereto] *the Court shall enter such order or orders requiring ADT to divest itself of such of its service revenues in excess of 50 percent of total service revenues in the United States as the Court deems necessary to restore or establish effective competition.*

ADT or Grinnell may, at any time, apply to the Court for relief from any provision of this Final Judgment upon a showing of undue hardship or that such provision is unnecessary in the light of changed conditions in any given locality or in the service industry.

or, in the alternative

VIII.

It is an objective of this Section and Final Judgment that competitive conditions be restored or created, and the dominant position of the defendant ADT be curtailed, in the furnishing of service. To this end, defendants ADT and Grinnell shall, *within such time as the Court shall require, submit to the Court for its approval a plan to accomplish such divestiture as may be necessary to reduce their service revenues to fifty percent (50%) of total service revenues in the United States. This plan shall provide for divestiture by ADT, within two (2) years of the*

date hereof, of five percent (5%) of its service revenues as of the date of entry of this Final Judgment, and of an additional five percent (5%) thereof within four (4) years of the date hereof, and for such additional divestiture periodically thereafter as the court may deem necessary to reduce ADT's service revenues to such fifty percent (50%) as of ten (10) years from the date of entry of this Final Judgment.

ADT or Grinnell may, at any time, apply to the Court for relief from any provision of this Final Judgment upon a showing of undue hardship or that such provision is unnecessary in the light of changed conditions in any given locality or in the service industry.

IX.

Defendant Grinnell is ordered and directed to divest *itself,* within [one] *two* years from the date of entry of this Final Judgment, *unless said time is extended by the Court on good cause shown, of* all shares of stock of, and any other financial interest in, defendants AFA and Holmes [and within one year from the date of completion of the requirements of Section VIII above with respect to Appendix (A) hereto, all shares of stock of, and any other financial interest in, defendant ADT]. Such divestiture shall be *to Grinnell's stockholders, or* to a person or persons in which defendant Grinnell does not have any financial interest, or a person or persons not otherwise affiliated with any defendant.

Defendant AFA is ordered and directed to divest itself, within two (2) years from the date of entry of this Final Judgment, unless said time is extended by the Court on good cause shown, of all shares of stock of, and any other financial interest in, defendant Grinnell, by distributing said shares or other interests to its stockholders, or otherwise.

X.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request, the defendant shall submit reports in writing in respect to any such matters as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and

directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification *or termination* of any provision thereof, for the enforcement of compliance therewith, and for punishment of violation thereof.

Dated: ———, 1964

———

United States District Judge.

APPENDIX A.

[In lieu of Government's Appendices A and B]

Defendants ADT and Grinnell shall either divest a central station corporation having service contracts yielding at least $125,000 service charges annually, or sell and transfer service contracts and equipment yielding at least $125,000 service charges annually, in each of the following localities:

1. Atlanta, Georgia
2. Buffalo, New York
3. Columbus, Ohio
4. Hartford, Connecticut
5. Louisville, Kentucky
6. Memphis, Tennessee
7. New Orleans, Louisiana
8. Oakland, California
9. Omaha, Nebraska
10. Rochester, New York
11. Springfield, Massachusetts
12. Syracuse, New York
13. Toledo, Ohio

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